

Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

April 9, 1990

Ms. Alma Jennings Haught
Clerk of the Superior Court
P.O. Box 889
Jury/Child Support, P.O. Box 628
Florence, Arizona 85232

Re: I90-033 (R87-124)

Dear Ms. Haught:

You have asked whether the law prohibits copying of birth certificates, death certificates, naturalization documents, passports, or marriage licenses. We conclude that state law prohibits copying of birth certificates and death certificates unless the copying is specifically authorized by law. State law, however, does not prohibit copying marriage licenses, although only the clerk of the superior court may certify such documents as genuine records of lawful marriage. Federal law prohibits copying, without lawful authority, a certificate of naturalization or citizenship, an alien registration certificate or alien registration receipt card, and an immigrant or non-immigrant visa issued for entry into the United States. Passports and other documents not protected against duplication may be copied for lawful purposes.

Vital records of birth, death, fetal death and adoption are governed by sections 36-301 to -347, Arizona Revised Statutes. Section 36-340 prohibits copying of vital records by persons charged with custody of such records, except as permitted by law. Section 36-340(A) provides:

To protect the integrity of vital records, to insure their proper use and to insure the efficient and proper administration of the vital statistics system, it shall be unlawful

for any person to permit inspection of any vital record in his custody, to disclose information contained therein, or to transcribe or issue a reproduction of all or part of any such record except as authorized by this chapter and the regulations promulgated hereunder.

(Emphasis supplied.) Section 36-341 prescribes the powers of the state registrar and subordinate local registrars to issue copies of vital records. Section 36-341(F),(G) provides as follows:

F. No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate or record of birth, death or fetal death, except as authorized by this chapter and the rules adopted under this chapter.

G. A school district or the county school superintendent may photocopy an original, certified copy or copy of a certificate or record of birth for the purposes of § 15-828, subsection C [concerning first-time school enrollments] if the school district or county school superintendent clearly identifies on the face of the copy that the document is a photocopy.

(Emphasis supplied.)

Any person who misuses a certificate or certified copy of the above vital records, with intent to deceive, is guilty of a class one misdemeanor. A.R.S. § 36-346(A). Any person who "knowingly disregards" the provisions of sections 36-301 to -345 is guilty of a class three misdemeanor. A.R.S. § 36-346(B).

The above statutes demonstrate the Legislature's intent that vital records of birth, death, fetal death and adoption^{1/} shall not be available for public inspection and that certificates or certified copies of the state's vital records be issued only by persons authorized to do so by law. The plain meaning of the language of section 36-341(F), that "[n]o person shall prepare or issue any certificate which

^{1/}A decree of adoption permits the state registrar to issue a new certificate of birth for the person adopted. A.R.S. § 36-326 and -326.01.

purports to be . . . a copy of a certificate or record of birth, death or fetal death . . .," evidences an intent that no person may photocopy or issue such vital records or certified copies of such records without lawful authority.^{2/} Because the Legislature has specified that vital records may not be copied except as provided by law, and because it has specified circumstances by which such records may be copied, we must conclude that the Legislature intended to prohibit copying for purposes not specifically authorized pursuant to statute. The expression of one or more items of a class in a statute indicates a legislative intent to exclude all items of the same class which are not expressed. Pima County v. Heinfeld, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982).

Marriage licenses may be issued by the clerk of the superior court in any county in this state. A.R.S. § 25-121. A justice of the peace whose office is located within five miles or more from the county seat may be designated by the clerk of court to issue marriage licenses in the county where the justice resides. A.R.S. § 25-126(A). The properly designated justice of the peace must receive blank marriage license forms from the clerk of the court and is accountable to the clerk for the keeping of such forms. A.R.S. § 25-126(B). Upon issuance of a marriage license, the justice must immediately report to the clerk of court the issuance of the license and remit to the clerk the marriage license fee. A.R.S. § 25-126(C). The clerk of the court must maintain books recording "all marriage licenses issued." A.R.S. § 25-123(A). All returns of marriage licenses must be endorsed by the person solemnizing the marriage, who must then return the license to the clerk of court within thirty days after solemnization. A.R.S. § 25-123(B).

Unlike vital records of births and deaths, the statutes do not restrict who may photocopy or inspect marriage licenses issued by justices of the peace or clerks of court. Consequently, access to records of marriage licenses are governed by the public records statutes, A.R.S. §§ 39-121 to -123. Generally, the public records statutes require that records in the possession of county officials such as justices of the peace and clerks of court be made available for public inspection, section 39-121, and copying, section 39-121.01(D), unless interests of privacy, confidentiality or best interests of the state outweigh the policy favoring open access to public records. Carlson v. Pima County, 141 Ariz. 487, 491, 687 P.2d 1242, 1245-1246 (1984). Generally, records of marriage are not considered so confidential or private that public access to such

^{2/} Additional support for this conclusion is found in section 36-341(G), authorizing school districts and school superintendents to photocopy children's birth certificates for limited purposes.

records may be restricted. See, e.g., Grand Forks Herald v. Lyons, N.D., 101 N.W.2d 543 (1960). Because the statutes do not prohibit copying of marriage license records and because such records are not private or confidential, we conclude that any person may access and copy the records for a lawful purpose, whether in possession of a justice of the peace or the clerk of court.^{3/}

The copying of certain naturalization or immigration documents is generally prohibited under 18 U.S.C. § 1426(h), which provides:

Whoever, without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof--

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.^{4/}

(Footnote added.)

Federal law also prohibits intentionally copying alien registration certificates or alien registration receipt cards without authorization of the United States Attorney General. 8 U.S.C. § 1306(d).^{5/} Likewise, immigrant or nonimmigrant visas issued for entry into the United States may

^{3/}However, we note that only the clerk of court is charged by law with custody and maintenance of such records, and, thus, only the clerk may certify such records as evidence of a valid marriage. A.R.S. §§ 12-282(C), 25-123; Rule 904(4), Arizona Rules of Evidence.

^{4/}A certificate of citizenship is a document issued by the United States Attorney General that a person has derived citizenship through naturalization of a parent or spouse or by application of federal states entitling a person to citizenship. 8 U.S.C. § 1452. A certificate of naturalization is a document issued by the clerk of a naturalization court attesting that citizenship has been conferred upon a person "after birth, by any means whatsoever." 8 U.S.C. § 1101(a)(23); 8 U.S.C. § 1449.

^{5/}Alien registration receipt cards are required for the registration of resident aliens pursuant to the Alien Registration Act of 1940, 54 Stat. 673 (codified in 8 U.S.C. §§ 1301 to 1306).

not be copied except under direction of the United States Attorney General or the Commissioner of the Immigration and Naturalization Service. 18 U.S.C. § 1546.^{6/} However, the law permits employers of alien residents to copy registration cards or other naturalization documents solely for the purposes of complying with provisions of the Immigration Reform and Control Act of 1986. 8 U.S.C. § 1324a(b)(4). Therefore, the copying of the documents described above is prohibited except when authorized pursuant to federal law.

A passport, unlike a certificate of naturalization or of citizenship, is an official document authorizing international travel for United State citizens. See 22 U.S.C. §§ 211a to 214; 22 C.F.R. § 51.1(e). The unlawful use of a passport has been defined by federal law as forging or falsely making a passport with intent that it be used, or knowingly using a passport in violations of conditions or restrictions regulating issuance of passports. 18 U.S.C. §§ 1543, 1544. Applicable federal statutes, 18 U.S.C. §§ 1541 to 1546, 22 U.S.C. §§ 211 to 218, and regulations, 22 C.F.R. §§ 50.1, 51.1 to 51.104, 53.2 to 53.4, governing passports do not specifically prohibit copying of such documents. Therefore, because Congress has specifically identified documents which may not be photocopied, such as certificates of naturalization and of citizenship, and has not prohibited the copying of passports, we conclude that passports may be photocopied under the principle of statutory construction that expression of one or more items of a class in a statute evidences an intent to exclude other items of the class not so expressed. Andrus v. Glover Construction Co., 446 U. S. 608, 616-617, 100 S. Ct. 1905, 1910, 64 L. Ed.2d 548, 557 (1980). See United States v. Campos-Serrano, 404 U. S. 293, 92 S. Ct. 471, 30 L. Ed.2d 457 (1971) (Holding that a prohibition against counterfeiting an "immigrant or non-immigrant visa, permit, or other document required for entry into the United States" in 18 U.S.C. § 1546 must be strictly construed to apply to documents required for entry into this country, and, therefore, will not apply to "alien registration receipt cards," which only serve an incidental or permissible entry function.)

We note that as part of its primary use for international travel, a currently valid United States passport has the "same force and effect as proof of United States

^{6/}Immigrant and nonimmigrant visas refer to visas issued to certain statutorily classified aliens who may enter and travel within the United States. 8 U.S.C. § 1101(a)(15), (16), (26). Immigrant and nonimmigrant visas are "entry documents" for purposes of the United States Code, as are "re-entry permits" and "immediate relative and special immigrant visas." See 8 U.S.C. §§ 1201 to 1204.

citizenship as certificates of naturalization or of citizenship issued by the [United States] Attorney General or by a court having naturalization jurisdiction" 22 U.S.C. § 2705(1). Although 18 U.S.C. 1426(h) prohibits copying of certificates of naturalization and of citizenship, section 1426(h) does not make any reference to passports or to other "documentary evidence of naturalization or citizenship" as in the prohibitions against forgery and counterfeiting in 18 U.S.C. § 1426(a)-(d). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" Russello v. United States, 464 U. S. 16, 23, 104 S. Ct. 296, 300, 78 L. Ed.2d 17, 24 (1983), quoting United States v. Wok Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972). Consequently, we conclude that 18 U.S.C. § 1426(h) only applies to the documents listed therein and not to unlisted documents such as passports, which incidentally serve as documentation of nationality or citizenship. 7/

In summary, we conclude that state law prohibits copying of birth certificates and death certificates unless the copying is specifically authorized by law. State law, however, does not prohibit copying marriage licenses, although only the clerk of the superior court may certify such documents as genuine records of lawful marriage. Federal law prohibits copying, without lawful authority, a certificate of naturalization or citizenship, an alien registration certificate or alien registration receipt card, and an immigrant or

7/History of the legislation does not contradict this conclusion. Congress adopted 22 U.S.C. 2705 in the Department of State Authorization Act, Fiscal Years 1982 and 1983, Pub. L. 97-241, § 117, 96 Stat. 273, 279 (1982). The provisions of 18 U.S.C. 1426(h) were enacted by the Nationality Act of 1940, Ch. 876, § 346(a)(29), 54 Stat. 1137, 1166 to codify the nationality laws of the United States into a comprehensive nationality code, H.R. Res. 9980, 76th Cong., 2d Sess. (1940). The legislative history makes no reference of one statute to the other. Considering the different purposes served by the documents (i.e., establishing nationality and providing a means of international travel for United States citizens) we cannot conclude that a passport is a "certificate of nationality or of citizenship" for purposes of the criminal penalties of section 1426(h). Such differences in time of enactment and legislative purpose led the Supreme Court in Campos-Serrano to conclude that Congress did not intend that "alien registration receipt cards" should be considered "documents required for entry into the United States" for purposes of 18 U. S. C. § 1546 even though the cards could serve such an entry function.

Ms. Alma J. Haught
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non-immigrant visa issued for entry into the United States.
Passports and other documents not protected against duplication
may be copied for lawful purposes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

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